

## BUREAU OF LAW

## MEMORANDUM

*Corp. Tax Determinations*  
*A-2*  
*Chilton Company*

TO: Commissioners Murphy, Palestin and Macduff  
FROM: E. H. Best, Counsel  
SUBJECT: THE CHILTON COMPANY

Article 9-A for the year 1958

The issue raised herein is whether or not a foreign corporation engaged in the publication of books and periodicals, which has personnel in this State engaged in editorial work in relation to such publications, is doing local business in this State. The facts herein are set forth in detail in my memoranda to the Director of the Corporation Tax Bureau dated January 23, 1962 and May 13, 1965, copies of which memoranda are hereto attached, and in the proposed determination prepared by the Hearing Officer in accordance with the opinion expressed in the memoranda. Briefly, the facts disclose that the corporation has a principal office in Pennsylvania, a branch office in Buffalo maintained for the purpose of selling advertising space in its publication, and a branch office at New York City containing 48 people, 24 of whom solicit advertising in the taxpayer's magazines, 1 salesman who solicits orders from businesses for printing, an office manager, 11 clerical assistants, and 8 persons engaged in editorial work in relation to the publication of magazines and books.

The work of the 8 persons consist of gathering material and ideas concerning market developments, information concerning products, material for articles, photographs and ideas for books. As set forth in my memoranda, I am of the opinion that the work done by the corporation in New York in relation to the preparation of its magazines and books it publishes constitutes intrastate or local activity subjecting the corporation to Article 9-A taxes (See Western Live Stock v. Bureau of Revenue, 303 U. S. 250; Matter of New Yorker Magazine v. Gerson, 3 N. Y. 2d 362, appeal dismissed 356 U. S. 339; Matter of McCall Corp. v. Joseph, 284 App. Div. 484).

I, therefore, approve the proposed determination sustaining the assessments. Kindly return this file after disposition.

\_\_\_\_\_  
Counsel

MS:ea  
Enc.

October 4, 1965

**STATE OF NEW YORK**

**THE STATE TAX COMMISSION**

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**In the Matter of the Application**

**of**

**CHILTON COMPANY**

**for revision of franchise tax  
assessed under Article 9-A of the  
Tax Law for the privilege year  
begun January 1, 1958.**

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Chilton Company, the taxpayer herein, having filed application for revision of franchise tax under Article 9-A of the Tax Law for the privilege year begun January 1, 1958, and a hearing having been held in connection therewith at the office of the State Tax Commission in New York City on October 18, 1962, before Edward A. Moran, Senior Tax Administrative Supervisor of the Corporation Tax Bureau of the Department of Taxation and Finance, at which hearing Stanley Appleby, treasurer of the taxpayer, appeared personally and testified, together with Howard F. Elin, C.P.A., and Zachary Scheer, C.P.A., of J.K. Lasser & Company, and the record having been duly examined and considered by the State Tax Commission,

**It is hereby found:**

**(1) That on the basis of a report filed, the tax was audited and stated, as follows:**

**Privilege Year Begun January 1, 1958**

<b>Entire Net Income per line 42</b>	<b>\$27,955.03</b>
<b>Plus officers' salaries (Less \$15,000)</b>	<b>202,166.13</b>
	<b>\$231,121.16</b>

30% of above amount	\$69,336.38
Less Investment Income (\$139,763.54 per Schedule K) - not in excess of above Business Income	<u>69,336.38</u> None
Investment Allocation	99.8334%
Allocated Investment Income	69,236.12
Tax at 5½%	3,887.99

(2) That the tax was audited and stated on November 27, 1959, and application for revision was filed on August 23, 1961;

(3) That the taxpayer was incorporated under the laws of Delaware on April 17, 1911 and immediately began to do business in New York State; that the taxpayer is engaged in the publication of books and periodicals and in doing printing work for businesses; that the magazines are printed and shipped to subscribers from the taxpayer's principal office and place of business in Philadelphia, Pennsylvania; that the taxpayer has branch offices in New York City and Buffalo, New York, with other branch offices located in eleven other states, the District of Columbia, England and Germany;

(4) That at its leased branch office in New York City the taxpayer employs forty-eight people; that twenty-four of these people solicit advertising for the magazines the taxpayer publishes; that six persons are engaged in editorial work in relation to the magazines published by the taxpayer, that two persons perform

editorial work in relation to the books published by the taxpayer; that a printing salesman also works out of the New York office; that other persons in the New York office include an office manager, clerks and stenographers;

(5) That the advertising salesman solicit advertising which appears in the magazines published by the taxpayer; that advertising is solicited from businesses and advertising agencies located in New York, New Jersey, Delaware, the New England states, and Florida; that all orders for advertising are accepted in Philadelphia; that advertising layouts and copy are prepared by the advertising agencies not by the taxpayer;

(6) That the work of the six persons engaged in editorial work in relation to the publication of the magazines consists of gathering, interpreting and reporting technical and market developments occurring in the New York area and in other areas covered by the office; that they also assemble information concerning changes in manufacturers and their products; that in gathering material for articles, the staff located in New York takes photographs, secures photographs from others, or hires local photographers; that reports, articles and photographs are in some cases prepared and sent from the field to Philadelphia; that in other cases the writing is done in the New York City office and is sent from there to Philadelphia;

(7) That the magazines published by the taxpayer are trade journals of various types and all are distributed nationally, except Hardware World which is distributed in thirteen western states;

(8) That the two persons who perform editorial work in New York in relation to the book publishing activities of the taxpayer receive and review manuscripts and book ideas and forward those that appear to be suitable to Philadelphia for rejection or approval; that one of these book editors is engaged in prompting the sale of books by presenting them to potential buyers, such as book clubs, boards of education, colleges and elementary schools; that contracts for such sales are negotiated in Philadelphia;

(9) That the printing salesman who works out of the New York City office is engaged in soliciting printing work from business concerns, orders of which are accepted in Philadelphia;

(10) That the Buffalo branch office is manned by one advertising salesman who performs the same type of services performed by the advertising salesman who work out of the New York City office.

Upon the foregoing findings and upon all of the evidence presented, it is hereby

**DETERMINED:**

(A) That the work done by the taxpayer in New York in relation to the preparation of the magazines and books it publishes constitutes intrastate or local activity;

(B) That Article 141 of Franchise Tax Regulations 9-A states, in part,

"A foreign corporation, the business of which is wholly interstate commerce, may do business in New York without becoming subject to the tax. But a foreign corporation, the business of which is partly interstate commerce and partly local business, is subject to the franchise tax imposed for the privilege of doing business in New York, and such tax, when measured by entire net income, is measured by all of its entire net income, including that derived from interstate commerce."

(C) That the tax for the privilege year begun January 1, 1958, as shown at (1) above, is affirmed as assessed;

(D) That the aforesaid tax does not include taxes or other charges which are not legally due.

Dated: Albany, New York

this 29th day of October, 1965

**THE STATE TAX COMMISSION**

/s/ JOSEPH H. MURPHY  
**COMMISSIONER**

/s/ IRA J. PALESTIN  
**COMMISSIONER**

/s/ JAMES R. MACDUFF  
**COMMISSIONER**